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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/581,333	10/06/2000	Edward Jobson	ALBIHNW-386	2484
EXAMINER				
ILDEBRANDO, CHRISTINA A				
ART UNIT			PAPER NUMBER	
1725				

DATE MAILED: 01/06/2004

530 7590 01/06/2004
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK
600 SOUTH AVENUE WEST
WESTFIELD, NJ 07090

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.	Applicant(s)	
09/581,333	JOBSON ET AL.	
Examiner	Art Unit	
Christina Ildebrando	1725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 39-77 is/are pending in the application.
- 4a) Of the above claim(s) 64-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 39-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. This application contains claims 64-77 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 39-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamada et al.

Yamada et al. (JP 7-144128) discloses an adsorbent composition which adsorbs a hydrocarbon contained in an exhaust gas. The composition comprises a zeolite having pores of a larger diameter and a zeolite having pores of a smaller diameter for exhaust gas cleaning which are physically mixed or laminated adjacently (Abstract, [0012], and claim 7). The reference teaches a mixture of 8 membered ring crystalline structures such as CHA having a pore diameter of 0.3-0.5 nm, 10 membered ring crystalline structures such as MFI, MEL, and FER having a pore diameter of 0.4-0.6, and 12 membered ring crystalline structure such as FAU and BEA having a pore diameter of 0.6-0.75 nm ([0015]-[0017] and Table 1).

With reference to the Figure 2, it is taught that the adsorption device (3) comprises a cordierite honeycomb support (4) with a coating layer (5) of the adsorbent component ([0075] and Figure 2). With reference to Figure 4, the coating layer may comprise a three layer structure comprising a first layer (11) of chabazite zeolite, a second layer (12) of ZSM-5 zeolite, and a third layer (13) of a faujasite zeolite on a honeycomb support (4) ([0079] and Figure 4). Alternatively, with reference to Figure 5, the three zeolites may be physically mixed and then washcoated onto a monolithic support ([0080] and Figure 5).

It is further taught that the composition is impregnated with catalytic metals such as Pt and Rh ([0056]). With reference to the examples, it is taught that a hydrogen-form (acidic) MFI-FAU composite is prepared which is impregnated with Pt and Rh. The composite is loaded on a honeycomb support. Refer to [0117]-[0121].

With reference to the language of the claims, it is considered that the 8 and 10 membered ring crystalline structure taught by the reference would meet the first porous structure and the 12 membered ring crystalline structure would meet the second porous structure, which would have a pore size larger than the first porous structure, as required by claim 41. The impregnation of the adsorbent component with platinum and rhodium as taught by the reference would meet the oxidation and reduction catalyst claimed herein. The arrangement of the catalyst material taught by the reference appear to meet the instantly claimed arrangement.

The intended use limitations throughout claims 39-63 are noted by the examiner. While intended use recitations cannot entirely be disregarded, in composition and article

claims, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention over the prior art. *In re Casey*, 370 USPQ 235 and *In re Otto*, 312 USPQ 458. It is the position of the examiner that the prior art structure is capable of performing the intended use and therefore meets the instant claims because it contains the same components in the same arrangement as the structure claimed herein.

With regards to the limitation "said first porous structure including pores having dimensions such that said reducing agent is sterically prevented from contacting said oxidation catalyst" it is the position of the examiner that because the zeolites taught by the reference, such as chabazite and ZSM-5, meet the pore size range claimed, the zeolites taught by Yamada et al. would meet the first porous structure. Similarly, with regards to the limitation "said second porous structure including pores having a dimension such that said reducing agent can contact said reduction catalyst" it is the position of the examiner that because the zeolites taught by the reference, such as faujasite and beta meet the pore size range claimed, i.e. greater than 6 angstroms, the zeolites taught by Yamada et al. would meet the second porous structure.

As each and every element of the claimed invention is taught in the prior art as recited above, the claims are anticipated by Yamada et al.

Response to Arguments

4. Applicant's arguments filed October 16, 2003 have been fully considered but they are not persuasive.

Applicant argues that the intended use of the composition taught by Yamada et al. differs from the intended use of the composition instantly claimed and argues that the compositions function in different ways to achieve different goals. These differences are noted by the examiner. However, the instant claims are directed towards a composition and not a process of use. While intended use recitations cannot entirely be disregarded, in composition and article claims, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention over the prior art. *In re Casey*, 370 USPQ 235 and *In re Otto*, 312 USPQ 458. In this case, the structure disclosed by the prior art appears to be identical to the structure instantly claimed. It is the position of the examiner that the prior art structure is capable of performing the intended use and therefore meets the instant claims. Applicant has not presented any evidence or any arguments which would differentiate the structure of Yamada from the structure instantly claimed. Therefore, the rejection is not withdrawn.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Ildebrando whose telephone number is (571) 272-1176. The examiner can normally be reached on Monday-Friday, 7:30-5, with Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571) 272-1171. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.

CAI
December 22, 2003


TOM DUNN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700